

Arizona Rules of Probate Procedure

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Contents

Rule 1. Scope, Applicability, and Construction.	1
Rule 2. Probate Case and Proceedings.....	2
Rule 3. Applicability of Other Rules.....	4
Rule 3.1. Contested and Uncontested Hearings.	5
Rule 5. Document Captions.....	6
Rule 6. Probate Information Form and Notice of Change of Contact Information Form.	7
Rule 7. Confidential Documents and Information.	9
Rule 7.1. Sealing and Unsealing Court Documents.	12
Rule 9. Notice of Initial Hearing on Petition.....	13
Rule 10. Duties of Self-Represented Parties.	15
Rule 10.1. Duties of Court-Appointed Fiduciaries.....	16
Rule 10.2. Duties of Counsel for Fiduciaries.	17
Rule 10.3. Duties of Counsel for the Subject Person of a Guardianship or Conservatorship Proceeding.	18
Rule 10.4. Duties of Investigators.	19
Rule 10.5. Repetitive Filings; Vexatious Conduct; Remedies.	20
Rule 11. Telephonic and Video Attendance and Testimony.	22
PART XX: TYPES OF COURT EVENTS	24
Rule 12. Initial Hearing on a Petition.	24
Rule 12.1. Conference.....	25
Rule 12.2. Oral Argument.....	26
Rule 12.3. Settlement Conference.....	27
Rule 12.4. Evidentiary Hearing.....	28
Rule 12.5 Compliance and Order to Show Cause Hearings.	29
Rule 13. Accelerated Hearings and Rulings; Emergency Appointments; Ex Parte Motions and Petitions.	30
Rule 14. Acknowledgment of a Consent, Waiver, Renunciation, or Nomination.....	31
Rule 15. Proposed Orders, Decrees, and Judgments.	32
Rule 15.2. Administrative Dismissals.	33
Rule 15.3. Administrative Closure of a Decedent’s Estate and Termination of Appointment.	34
Rule 15.4. Involuntary Termination of a Minor Guardianship or Closure of a Minor Conservatorship Case.....	36

Rule 15.5. Remedies for Non-Compliance by a Guardian or Conservator.....	37
Rule 16. Applications in Probate Proceedings.	38
Rule 17. Petitions in Probate Proceedings.....	39
Rule 18. Motions in Probate Proceedings.....	40
Rule 20. Affidavit of Proposed Guardian or Conservator. [Abrogated.]	41
Rule 21. Background Check Requirements [Abrogated.].....	42
Rule 22. Order Appointing Guardian, Conservator, Personal Representative, or Special Administrator.....	43
Rule 23. Appointment of a Temporary Guardian or Temporary Conservator.....	45
Rule 25. Order to Fiduciary.	46
Rule 26. Issuing and Recording Letters of Appointment.	47
Rule 27. [Reserved].	48
Rule 28. Management of Contested Probate Proceedings.	49
Rule 28.1. Disclosure and Discovery.....	51
Rule 28.2. Demand for Jury Trial.....	53
Rule 29. Alternative Dispute Resolution in Probate Proceedings.....	54
Rule 30. Conservator’s Inventory, Budget, and Account.	55
Rule 30.1 Financial Order for Conservatorships. [Abrogated].....	58
Rule 30.2 Sustainability of a Conservatorship. [Abrogated].....	59
Rule 30.3. Conservatorship Estate Budgets. [Abrogated].....	60
Rule 31. Annual Guardian Reports.....	61
Rule 32. Personal Representative’s Inventory and Account; Trustee’s Account.....	62
Rule 33. Compensation for Fiduciaries, Attorneys, and Statutory Representatives.	64
Rule 34. Distributions to Minor, Incapacitated Persons, and Protected Adults. [Abrogated].....	66
Rule 35. Enforcement of Court Orders in Probate Cases.....	67

Rule 1. Scope, Applicability, and Construction.

- (a) Scope.** These rules govern procedures in all probate cases in the superior court.
- (b) Applicability.** These rules apply to all persons in a probate case, whether self-represented or represented by an attorney.
- (c) Construction.** The court must enforce and construe these rules in a manner that ensures a consistent, predictable, prompt, efficient, and just resolution of probate cases.

Rule 2. Probate Case and Proceedings.

(a) Generally. These definitions distinguish between a **probate** case and the various proceedings that may occur within the case.

(b) Meaning of “Probate Case.” A probate case is a court case originally commenced by a probate proceeding. Each probate case is assigned a unique number by the court clerk. A probate case will include one or more probate proceedings and may include one or more non-probate proceedings.

(c) Meaning of “Probate Proceeding.” A probate proceeding is:

- (1)** A proceeding arising under A.R.S. Title 14, including cases concerning decedents’ estates, trusts, guardianships, conservatorships, and related matters, and any associated proceeding for declaratory relief under A.R.S. Title 12, Chapter 10, Article 2; or
- (2)** A proceeding under A.R.S. Title 36, Chapter 32, regarding living wills and health care directives.

(d) Meaning of “Non-Probate Proceeding.” A non-probate proceeding is one which can be filed as a separate case but may be appropriately filed within or consolidated with a probate case, such as a **qualifying** civil action, a juvenile proceeding, or a family law proceeding.

Note: This is derived from current Rule 2(O) and 2(P).

The comment to Rule 2(O) and 2(P) says:

Regarding Rules 2(O) and (P). The definitions of “probate case” and “probate proceeding” are intended to distinguish between the establishment of a court case and the various proceedings that may occur within the case. Thus, a “probate case” is a court case originally commenced for one or more of the listed purposes. Each probate case is assigned a single number by the clerk of court. A probate case will involve one or more probate proceedings. *See, e.g.,* A.R.S. § 14-3107. For example, a probate case relating to a decedent’s estate may involve a proceeding to probate a will and appoint a personal representative, a proceeding to approve the sale of real property, and a proceeding to settle the estate and discharge the personal representative. Each application or petition filed within a probate case gives rise to a separate probate proceeding. A probate case may also involve non-probate issues such as personal injury claims or breach of contract claims. Thus, a probate case also may involve a civil action or a family law proceeding filed within or consolidated with the probate case.

Regarding Rule 2(P). For purposes of these rules, the definition of “civil action” includes, but is not limited to, actions that assert claims for breach of contract, negligence, fraud, or statutory abuse.

Rule 3. Applicability of Other Rules.

(a) Probate Proceedings.

(1) **Civil Rules.** The *Arizona Rules of Civil Procedure* apply to probate proceedings unless they are inconsistent with these probate rules or A.R.S. Title 14.

(2) Rules of Evidence.

(A) ***Contested Hearings.*** The Arizona Rules of Evidence apply to contested hearings unless all parties and the court agree those rules will not apply.

(B) ***Uncontested Hearings.*** The Arizona Rules of Evidence do not apply in uncontested hearings.

(C) ***Admissibility of Evidence When the Arizona Rules of Evidence Do Not Apply.*** When the Arizona Rules of Evidence do not apply, all relevant evidence is admissible, provided, however, that the court may exclude any relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence, or lack of reliability.

(b) **Non-Probate Proceedings.** In non-probate proceedings, the same procedure and evidence rules apply as if the matter had been litigated as a separate action.

Rule 3.1. Contested and Uncontested Hearings.

- (a) When a Hearing Becomes Contested.** Rule 17 governs the procedure for objections at initial hearings. Otherwise, a hearing becomes contested only if a party has filed a timely written objection to the relief requested by the motion or petition.
- (b) Precluding Evidence at an Uncontested Hearing.** A hearing that is not contested under section (a) is uncontested. At an uncontested hearing, the court may preclude non-moving or non-petitioning parties from presenting evidence in opposition to the motion or petition.
- (c) Joinder or Statement of No Position.** For purposes of this rule, joinders and statements of no position are not considered written objections.

Rule 5. Document Captions.

(a) Generally. The first page of every document filed with the court must contain a caption that complies with Civil Rule 5.2(a).

(b) Title of the Case. The title of the case must include the following information:

- (1)** The name of the subject person or trust; and
- (2)** Immediately below the subject person's name, the subject person's status as an adult, a minor, or deceased.

(c) Continuation of a Conservatorship or Other Protective Order. A petition to continue the conservatorship of a minor or other protective order beyond the minor's eighteenth birthday under A.R.S. § 14-5401(B) must be filed in the existing case. If the court grants the petition, the case number will remain the same, but the caption must be amended to reflect that the conservatorship or protective order is for an adult.

Rule 6. Probate Information Form and Notice of Change of Contact Information Form.

(a) Definitions. For purposes of this rule,

- (1) “Contact information”** means that information designated on the Probate Information Form as contact information.
- (2) “Fiduciary”** means personal representative, guardian, or conservator, whether temporary or permanent.

(b) Probate Information Form.

- (1) Generally.** A party who requests the appointment of a personal representative must file a Probate Information Form that is substantially similar to Form 11 in Rule 38. A party who requests the appointment of a guardian or conservator, whether temporary or permanent, must file a Probate Information Form that is substantially similar to Form 12 in Rule 38.
- (2) Confidentiality.** The court must maintain a Probate Information Form filed under this rule as a confidential document under Rule 7.
- (3) No Service.** Except as required by the court, a party who files a Probate Information Form is not required to provide other parties or interested persons with a copy of the Probate Information Form.
- (4) Non-Compliance.** The clerk may not reject a petition or application because the filing party failed to provide all the information required in the Probate Information Form.
- (5) Duty to Correct.** A party who has filed a Probate Information Form and who subsequently learns that **date of birth or social security number** contained in that Probate Information Form is incorrect must file an amended Probate Information Form within 10 days after learning of the incorrect information.

(c) Notice of Change of Contact Information.

(1) Generally.

- (A) Change in Contact Information for Fiduciary.** If a fiduciary’s contact information changes during the fiduciary’s appointment in a probate case, the fiduciary must file a Notice of Change of Contact Information Form that is substantially similar to Form 13 in Rule 38 within 10 days after such change occurs.

(B) Change in Contact Information for Ward. If a ward's contact information changes, the ward's guardian must file a Notice of Change of Contact Information Form that is substantially similar to Form 14 in Rule 38 within 3 days of learning of such change.

- (2) No Confidentiality.** Unless the court orders otherwise, a Notice of Change of Contact Information filed under this rule must be maintained as part of the public record.
- (3) Service.** Unless the court orders otherwise, a person who files the form must mail or deliver a copy of the form to the subject person's court-appointed attorney, the subject person's guardian ad litem, and all current parties to the probate case in which the Notice of Change of Contact Information Form has been filed.
- (4) Non-Compliance.** Absent good cause, the fiduciary must pay all costs of the court or the estate that result from a failure to timely provide a notice of change of contact information.

Rule 7. Confidential Documents and Information.

(a) Definitions.

(1) “Confidential document” means:

- (A)** the information form filed under Rule 6;
- (B)** medical reports and records that are filed in connection with proceedings under A.R.S. §§ 14-5303, -5310, -5401.01, or -5407, or A.R.S. § 36-3206, or as required by A.R.S. §§ 14-5312.01 and -5312.02;
- (C)** budgets filed under Rule 30;
- (D)** inventories and appraisements filed under A.R.S. § 14-5418(A);
- (E)** accountings filed under A.R.S. Title 14;
- (F)** a credit report; or
- (G)** any other document that the court orders filed as a confidential document under this rule.

(2) “Confidential information” means:

- (A)** a social security number of a living person;
- (B)** any financial account number, unless limited to the last four digits only; or
- (C)** any other information the court determines is confidential.

(3) “Financial account” includes bank, credit card, debit card, and brokerage accounts; pensions, profit-sharing, or retirement and similar benefit plans; and an insurance policy or an annuity contract.

(4) “Redact” means to edit or obscure text in a document in a manner that prevents it from being read. Redaction must be accomplished so that the redacted information cannot be identified in either paper or electronic formats.

(b) Access to Confidential Documents.

- (1) Generally.** Confidential documents are not part of the public record of a probate case.
- (2) Probate Information Form.** Only the following persons may access the Rule 6 information form:

- (A) an attorney or a statutory representative appointed by the court to represent the person who is the subject of a guardianship or conservatorship proceeding in which the document has been filed;
- (B) a court investigator appointed for the probate case in which the information form has been filed;
- (C) judicial officers, court administrative staff, and other court personnel whose official duties require access to confidential information for processing and managing probate cases;
- (D) any person authorized by the court, on a showing of good cause, to view or obtain a copy of the confidential document;
- (E) staff from the Administrative Office of the Courts who are conducting a compliance audit of a fiduciary, or an investigation into alleged misconduct by a licensed fiduciary, under Arizona Code of Judicial Administration § 7-201; and
- (F) the public fiduciary.

(3) Other Confidential Documents. Only the following persons may access other confidential documents:

- (A) the persons described in subparts (b)(2)(A) through (F);
- (B) a party to the probate case in which the document has been filed and that party's attorney or other legal representative; and
- (C) a person appointed as a medical professional, psychologist, registered nurse, or accountant for the probate case in which the document has been filed.

(c) Filing Paper Confidential Documents. A party filing a paper confidential document must place it in an envelope marked with the case name, the case number, the name of the document being filed, the name of the party filing the document, and the words "Confidential Document." A confidential document filed as an exhibit to a pleading or motion must state on the envelope the title of that pleading or motion and identify the exhibit number. A party must use a separate envelope for each confidential document. The clerk is not required to review a document to determine whether it is a confidential document.

(d) Prohibition on Filing Confidential Information.

- (1) **Generally.** Other than in a confidential document, a person must refrain from including confidential information in any document the person files with the

court, whether filed electronically or in paper, unless otherwise ordered by the court or as prescribed by law.

- (2) **Responsibility with Filer.** The responsibility for not including or redacting confidential information rests solely with the person filing a document. The clerk and the court are not required to review documents for compliance with this rule, or to seal or redact documents that contain confidential information.

(e) Motions Concerning Confidential Documents and Information.

- (1) **Available Orders.** On its own or on a party's motion, the court may order that:

- (A) a document be filed as a confidential document;
- (B) a document not be filed as a confidential document;
- (C) confidential information contained in a non-confidential document be redacted and, in instances where the document has not yet been filed, the filing party perform the redaction; or
- (D) a filed document be replaced with an identical document with confidential information redacted or removed.

- (2) **Motion's Requirements.** A party filing a motion to have a document or information deemed confidential must include in the motion:

- (A) the title of the document to which the motion pertains;
- (B) the date the document was filed; and
- (C) why information should be redacted, or the document should be filed as a confidential document.

- (f) **Confidential Documents as Hearing Exhibits.** A confidential document may be used as an exhibit, or a part of an exhibit, at any hearing in the probate case in which the confidential document was filed. The party submitting the exhibit for the clerk to mark must identify the document as being, or including, a confidential document, and the clerk must mark it as such. Any exhibit that is, or includes, a confidential document and that is offered into evidence is governed by section (b).

- (g) **Sanctions.** The court may impose appropriate sanctions on a person who violates this rule.

Rule 7.1. Sealing and Unsealing Court Documents.

(a) Procedure. The procedure for sealing and unsealing documents in a probate case is provided in Civil Rule 5.4.

(b) Access to Sealed Documents. Court documents that are sealed in a probate case may be examined only by judicial officers. Access to sealed documents by court staff or clerk staff will be determined by local administrative orders or as allowed by Rule 7(b)(2)(E). Access to sealed documents by parties and the public will be allowed only after entry of a court order, except that the following persons may obtain certified copies of any sealed order appointing the fiduciary and the fiduciary's sealed letters of appointment without a court order unsealing those documents:

- (1) a court-appointed fiduciary,
- (2) that fiduciary's attorney, or
- (3) a person authorized by the fiduciary or the fiduciary's attorney upon presentation of a completed form substantially similar to Form X.

NOTE: Inasmuch as there is another group of judges, clerks, State Bar members, and stakeholders that is currently evaluating the operation of Civil Rule 5.4, WG-1 recommends relying on Rule 5.4 and allowing that group to take the lead on revisions to Rule 5.4

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Rule 9. Notice of Initial Hearing on Petition.

(a) Required Content. The notice of an initial hearing on a petition required by Rule 12(b) must state:

- (1) the title of the petition to be heard;
- (2) the date, time, and place of the initial hearing; and
- (3) the name of the judicial officer before whom the petition is set for hearing.

(b) Required Warning. The notice must include the following warning:

This is a legal notice; your rights may be affected. [Éste es un aviso legal. Sus derechos podrían ser afectados.

You are not required to attend this hearing. However, if you oppose any of the relief requested in the petition that accompanies this notice, you must file with the court a written response at least 7 days before the hearing date or you or your attorney must attend the hearing. Any written response must comply with Rule 17(e) of the Arizona Rules of Probate Procedure. If you do not file a timely response or attend the hearing:

- (1) The court may grant the relief requested in the petition without further proceedings, and
- (2) You will not receive additional notices of court proceedings relating to the petition unless you file a Demand for Notice pursuant to Title 14, Arizona Revised Statutes.

(c) Required Copy of the Petition or Motion. Except for notices that are published, the notice must be accompanied by a copy of the petition that is the subject of the initial hearing, unless the court orders otherwise or the person being served waives this requirement.

(d) Petition for the Confirmation of a Sale of Real Estate.

(1) **Notice of Hearing.** In addition to the information required by (a) and (b), a notice of an initial hearing on a petition for the confirmation of a sale of real estate must contain the following information:

- (A) the name and telephone number of the petitioner or the petitioner's attorney;
- (B) the proposed sales price; and
- (C) a statement that the court may consider other bids at the hearing.

(2) *Providing, Posting, and Publishing the Notice.*

(A) *Providing the Notice to Interested Persons.* The notice of the hearing must be provided to all interested persons as required by A.R.S. § 14-1401(A), unless the court orders otherwise.

(B) *Posting and Publication.* The court also may require either or both of the following to be done at least 14 days before the hearing:

(i) The notice of hearing to be posted on the property to be sold, and

(ii) The notice of hearing to be published in a newspaper of general circulation in the county in which the property is located.

(C) *Placement of Posted Notice.* If the court orders that notice of the hearing be posted on the property, the notice must be posted in a place that is visible from the front of the property and, if the property is a structure, in a place that is visible from outside the structure.

(e) *Inapplicability of Civil Procedure Rule 6(c).* The provisions of Rule 6(c), Arizona Rules of Civil Procedure, do not apply to notices of hearing in probate proceedings or notice of proceedings to challenge or enforce the decision of a person authorized to make health care decisions for a patient.

Rule 10. Duties of Self-Represented Parties.

- (a) Contact Information.** Self-represented parties must inform the court of their current mailing address, email address, and telephone number, and of any change in their address or telephone number.
- (b) Representation of Parties.** Only an active member of the State Bar of Arizona or an attorney who has been admitted *pro hac vice* under the Rules of the Arizona Supreme Court may represent a party in a probate court proceeding.
- (c) Fiduciaries.** A non-lawyer serving as a fiduciary may represent himself or herself in that capacity in the probate case.

Rule 10.1. Duties of Court-Appointed Fiduciaries.

(a) Generally. A court-appointed fiduciary must:

- (1) review all court filings prepared on the fiduciary's behalf;
- (2) if the fiduciary is a licensed fiduciary who is not also an active member of the State Bar of Arizona, place the fiduciary's license number on all documents signed by the fiduciary and filed with the court.

(b) Duties Following Death of a Ward or Protected Person. Upon the death of a fiduciary's ward or protected person:

- (1) a guardian or conservator appointed under A.R.S. Title 14 must give the court, no later than 10 days after learning that the ward or protected person has died, written notice of the ward or protected person's death; and
- (2) except as provided in A.R.S. § 14-5419(F) or as the court orders otherwise, a conservator must file a final accounting of the protected person's estate no later than 90 days after the protected person's death. The accounting must reflect all activity between the ending date of the most recently approved accounting and the date of the protected person's death. The court may extend the date for filing the accounting or relieve the conservator from filing an annual or final accounting.

(c) Termination of Appointment. Before resigning from a case or having the court terminate the guardian's responsibilities, a court-appointed guardian must comply with statutory requirements for withdrawal, including the filing of final reports and accountings.

(d) Duties upon a Minor's Death, Adoption, Marriage or Emancipation. If a minor ward dies, is adopted, marries, or attains majority, a court-appointed guardian must give the court written notice no later than 10 days after the event. If a minor does not have a conservator when a guardianship terminates, the guardian must provide the court and former minor ward with a written list of any known assets or monies, beyond personal effects, the guardian believes are owned by the former minor ward.

Rule 10.2. Duties of Counsel for Fiduciaries.

(a) Duty to Minimize Legal Expenses. To minimize legal expenses, a fiduciary's attorney must encourage the fiduciary to take actions the fiduciary is authorized to perform and can perform competently rather than have the attorney perform them.

(b) Duty upon Withdrawal. An attorney who has appeared in a probate case as counsel of record for a guardian, conservator, personal representative, or trustee must include with a motion to withdraw, in addition to the requirements set forth in Civil Rule 5.3:

- (1)** a status report that advises the court and parties of any issues pending in the probate case; and
- (2)** a statement that informs the court and parties whether, to the best of the attorney's knowledge, all required guardian reports, inventories, accountings, and other similar required reports have been filed.

Rule 10.3. Duties of Counsel for the Subject Person of a Guardianship or Conservatorship Proceeding.

- (a) Initial Training.** Any attorney who serves as a court-appointed attorney or statutory representative for a proposed adult ward or adult protected person must first complete a training course prescribed by the Supreme Court.
- (b) Later Required Training.** An attorney who continues to serve as a court-appointed attorney or statutory representative for an adult ward or protected person must complete an additional training course prescribed by the Supreme Court every 5 years.
- (c) Termination of Appointment.**

 - (1) *Generally.*** The appointment of an attorney representing the subject person in a guardianship or conservatorship proceeding terminates upon the subject person's death.
 - (2) *Exception.*** In extraordinary situations, the court for good cause may authorize the limited participation of the subject person's attorney after the subject person's death, if the court's order authorizing the attorney's continued participation sets forth the basis and scope of the attorney's continued participation.

Rule 10.4. Duties of Investigators.

- (a) Initial Training.** Before being appointed as an investigator under A.R.S. §§ 14-5303(c), 14-5407(b), or 36-540(g), a person must first complete a training course prescribed by the Supreme Court. The Supreme Court will issue a certificate of completion and the investigator must file a copy of the certificate in the probate case in which the investigator was appointed.
- (b) Later Required Training.** Any person who continues to serve as a court-appointed investigator must complete an additional training course prescribed by the Supreme Court every 5 years and must file a copy certificate of completion in the probate case in which the investigator was appointed.

Rule 10.5. Repetitive Filings; Vexatious Conduct; Remedies.

(a) Definitions. For purposes of this rule:

- (1)** “Court-appointed attorney” means an attorney appointed pursuant to A.R.S. §§ 14-5303(C), 14-5310(C), 14-5401.01(C), or 14-5407(B).
- (2)** “Fiduciary” means an agent under a durable power of attorney, an agent under a health care power of attorney, a guardian, a conservator, a personal representative, a trustee, a statutory representative, or a special conservator appointed under A.R.S. § 14-5409.
- (3)** “Vexatious conduct” means habitual, repetitive conduct undertaken solely or primarily to harass or maliciously injure another party or that party’s representative, cause unreasonable delay in proceedings, cause undue harm to the ward or protected person, or cause unnecessary expense. It does not include conduct undertaken in good faith.

(b) Notice of Repetitive Filings.

- (1) *Grounds.*** A party may file a notice of repetitive filings if:
 - (A)** the party has a good faith belief that an interested person has filed a motion or petition that requests the same or substantially similar relief to the relief requested in an earlier motion or petition filed within the preceding 12 months by the same interested person; and
 - (B)** the later-filed motion or petition does not describe in detail a change in fact or circumstance that supports the requested relief.
- (2) *Timing and Identification of the Earlier Filing.*** A party must file a notice of repetitive filing no later than the response or objection deadline for the allegedly repetitive filing. A notice of repetitive filing must include the title and date of the alleged repetitive filing, the title and date of the earlier filing, and the date of the court’s ruling on the earlier filing.
- (3) *Effect of Notice.*** A notice of repetitive filing stays the deadline to respond or object to the alleged repetitive filing until further court order.
- (4) *Court’s Authority.*** The court may summarily strike a repetitive motion on its own or after receiving a notice of repetitive filing.

(c) Remedies. If the court finds that a person has engaged in repetitive filings or vexatious conduct in a probate case, the court may do any combination of the following:

- (1)** Require the person to obtain the court's permission to file future pleadings and other papers in the probate case or in other cases, and, if the court enters such an order, no party is required to respond to the person's future filings until ordered to do so;
- (2)** Order that a fiduciary, fiduciary's attorney, court-appointed attorney, statutory representative, trustee, or personal representative not be required to respond to future requests for information made by the person that are related to the probate case, unless a later order requires it;
- (3)** Order any other civil remedy or remedy provided by law.

Rule 11. Telephonic and Video Attendance and Testimony.

(a) Definitions.

- (1) **“Proceeding.”** When used in this rule, “proceeding” means a court event at which interested persons or their attorneys have an opportunity to attend. These events include, but are not limited to, a trial, hearing, non-appearance hearing, oral argument, status conference, and scheduling conference.
- (2) **“Telephonic.”** When used in this rule, “telephonic” means by telephone, video conferencing, or other available audio or audiovisual technology.

(b) When Permitted. Parties and their attorneys are expected to appear in open court for court proceedings unless the court, in its discretion, permits telephonic attendance under this rule. The court may allow a person to telephonically attend, or testify at, a proceeding if both of the following are true:

- (1) that person can be heard by every other person participating in the proceeding, including the judicial officer and, if applicable, the court reporter or an electronic recording system; and
- (2) no party will be unfairly prejudiced by the telephonic attendance or testimony.

(c) How Requested. Unless otherwise ordered by the court, a person who wishes to telephonically attend, or testify at, a proceeding must either file a written motion or make an oral motion in open court. The request may be for a particular proceeding or for multiple proceedings. A written motion made under this rule must be served on all parties and any person who has filed a demand for written notice and must be accompanied by a proposed order.

(d) Time for Making Request. Unless otherwise provided by local rule, a written or oral motion to allow telephonic attendance or testimony must be made in a timely manner considering the circumstances at the time the request was made, and the court has the discretion to grant or deny the motion. Circumstances may include but are not limited to: (1) the promptness of the party in making the request; (2) the nature of the proceeding, including whether it is contested or evidentiary; (3) whether all other parties agree to the telephonic attendance or testimony; (4) the reason why telephonic attendance or testimony is being requested; and (5) logistical factors.

(e) Objection to Request. A party opposing a written motion made under this rule must file a response no later than 5 days after the motion is served. The court may modify or waive this time limit or may rule on the written motion prior to the filing of a response.

(f) Reply and Oral Argument. The court may rule on a written motion made under this rule without a reply or oral argument.

(g) Use of Exhibits During Telephonic Testimony. Unless otherwise ordered by the court, before a party may question a person testifying telephonically about an exhibit, that party must:

- (1) have provided that person and all parties, in advance, with a copy of that exhibit, marked so that it can be easily identified by that person, all parties, and the court; and
- (2) confirm to the court that the exhibit provided to the court is identical to the exhibit provided to the person who is testifying telephonically.

(h) Costs of Telephonic Attendance or Testimony. The person requesting telephonic attendance or testimony must arrange it, and, unless the court orders otherwise, pay the related costs.

COMMENT

A party should carefully consider a request to present telephonic testimony or arguments in a contested matter. A witness's demeanor while testifying is an important factor used by the court to assess a *witness's* credibility. A party who offers a witness by telephone may be at a disadvantage if the testimony is contradicted by a witness who testifies in person. Judicial officers may deny an untimely request if it detracts from the court's ability to address other matters on the court's calendar or if it affects the court's ability to judge the demeanor of the witnesses in a contested matter.

PART XX: TYPES OF COURT EVENTS

Rule 12. Initial Hearing on a Petition.

- (a) Setting of Initial Hearing.** When a petition is filed, the court must set a specific date, time, and place for an initial hearing on the petition AND MUST INFORM THE PETITIONER WHETHER THE PETITIONER MUST ATTEND.
- (b) Notice of Initial Hearing.** The petitioner must give notice of the date, time, and location of the hearing as required by A.R.S. Title 14 and Rules 9 and Rule 17(d).
- (c) Attendance at the Initial Hearing.**
 - (1) Petitioner.** Unless the court has specified otherwise, the petitioner must attend the initial hearing.
 - (2) Other Interested Persons and Their Attorneys.**
 - (A) No Opposition to Relief Requested in Petition.** Unless the court has specified otherwise, an interested person who does not oppose the relief requested in the petition is not required to attend the initial hearing.
 - (B) Opposition to Relief Requested in Petition.** An interested person who opposes the relief requested in the petition must attend the initial hearing unless the interested person has filed a written response to the petition at least 7 days before the hearing. If the interested person attends the initial hearing, the interested person must notify the court of such person's presence and opposition to the petition.
- (d) Procedure at Initial Hearing.**
 - (1) No Opposition.** If no interested person has opposed the relief requested in the petition as provided in Rule 17, the court may decide the issues raised in the petition at the initial hearing without setting any additional court events.
 - (2) Opposition.** If an interested person has opposed the requested relief as provided in Rule 17, the court must note the opposition in the minutes and follow the procedures set forth in Rules 27-29 relating to contested matters.
- (e) Evidence.** Evidence may be presented at the initial hearing unless the court has specified that the petitioner is not required to attend the initial hearing, in which case evidence may be presented only upon agreement of the parties.

Rule 12.1. Conference.

- (a) Definition.** A “conference” is an event on the court’s calendar at which the court and the parties discuss the status and scheduling of a court proceeding or any other matter as determined by the court and the parties. “Conference” includes a pretrial conference, a scheduling conference, and a status conference, but not a settlement conference under **Rule 12.3.**
- (b) Setting a Conference.** The court may set a conference if requested by a party or on the court’s own motion.
- (c) Notice of a Conference.** The court must notify the parties of the date, time, and place of a conference, but it is not required to provide notice of the conference to an interested person unless the interested person has filed a demand for notice.
- (d) Attendance at a Conference.** Parties must attend a conference, unless the court orders otherwise.
- (e) Evidence.** Although the parties may state their positions at a conference, evidence may not be presented.

Rule 12.2. Oral Argument.

- (a) Definition.** “Oral argument” is an event on the court’s calendar at which the parties argue their positions in support of, or in opposition to, a motion.
- (b) Setting Oral Argument.** The court may set oral argument if requested by a party, or on the court’s own motion.
- (c) Notice of Oral Argument.** The court must notify the parties of the date, time, and place of an oral argument, but it is not required to provide notice to an interested person unless the interested person has filed a demand for notice.
- (d) Attendance at Oral Argument.** Parties must attend the oral argument unless the court orders otherwise.
- (e) Evidence.** Evidence may not be presented at an oral argument.

Rule 12.3. Settlement Conference.

- (a) Definition.** A “settlement conference” is a court event at which a judicial officer attempts to facilitate a voluntary settlement between the parties and does not decide disputed issues.
- (b) Setting a Settlement Conference.** The court may set a settlement conference on request of any party or on the court’s own motion.
- (c) Notice of a Settlement Conference.** The court must notify the parties of the date, time, and place of a settlement conference, but it is not required to provide notice to an interested person, even when the interested person has filed a demand for notice.
- (d) Attendance at a Settlement Conference.** All parties and their attorneys must attend a settlement conference unless the court orders otherwise.
- (e) Record.** Settlement discussions occur off the record. If the parties reach a settlement, the terms of the settlement must either be placed on the record and entered in the minutes or be included in a writing signed by the parties.
- (f) Communication with One Party.** The judicial officer may communicate with one party during the conference outside the presence of the other parties.
- (g) Evidence.** Documents or other things may be presented to the judicial officer who is conducting the settlement conference, but those items are not admitted into evidence. ~~unless the parties reach an agreement and those items are necessary to show or explain the terms of the parties’ agreements.~~ Testimony may be taken only in support of, or to make a record of, the parties’ agreement.

Rule 12.4. Evidentiary Hearing.

- (a) Definition.** A “evidentiary hearing” is a court event, subsequent to an initial hearing, where the parties present evidence to a judicial officer or a jury, who will determine issues of fact. An evidentiary hearing includes a trial.
- (b) Setting of an Evidentiary Hearing.** If the court does not decide all the issues raised in a petition at the initial hearing, the court must set an evidentiary hearing on the petition.
- (c) Notice of an Evidentiary Hearing.** Unless the court orders otherwise, the court must notify the parties of the date, time, and place of an evidentiary hearing, but it is not required to provide notice to an interested person unless the interested person has filed a demand for notice.
- (d) Procedure at an Evidentiary Hearing.** Rule 38 and Rules 39 through 53 of the Arizona Rules of Civil Procedure apply to evidentiary hearings in probate proceedings except as otherwise provided by A.R.S. Title 14.

Rule 12.5 Compliance and Order to Show Cause Hearings.

(a) Compliance Hearing.

- (1) Definition.** A “compliance hearing” is a court event to determine whether a party has complied with a court order.
- (2) Setting of Compliance Hearing.** The court may set a compliance hearing whenever the court determines such a hearing is appropriate.
- (3) Notice of Compliance Hearing.** The court must notify the parties of the date, time, and place of the compliance hearing, but it is not required to provide notice to an interested person unless the interested person has filed a demand for notice.
- (4) Attendance at Compliance Hearing.** Unless the court orders otherwise, only the person who was ordered to perform the task that is the subject of the compliance hearing, and that person’s attorney, must appear at the compliance hearing.
- (5) Evidence.** The court may receive evidence to determine whether a person has complied with the court’s order.

(b) Order to Show Cause Hearing.

- (1) Definition.** An “order to show cause hearing” is a court event to address a party’s or a fiduciary’s failure to discharge duties or obligations required by court order, court rule, or statute.
- (2) Setting of Order to Show Cause Hearing.** The court may set an order to show cause hearing on the filing of an application and affidavit that comply with Rule 7.3, Arizona Rules of Civil Procedure, or on the **court’s initiative**. The court must set a specific date, time, and place for the order to show cause hearing.
- (3) Notice of Order to Show Cause Hearing.** Notice of an order to show cause hearing must be served in accordance with Rule 7.3, Arizona Rules of Civil Procedure.
- (4) Evidence.** The court may receive evidence at an order to show cause hearing.

Rule 13. Accelerated Hearings and Rulings; Emergency Appointments; Ex Parte Motions and Petitions.

- (a) Accelerated Hearings on Petitions.** Except as provided in section (c), a party requesting an accelerated hearing on a petition must file a separate motion that states the legal authority and factual circumstances supporting the request. The motion may incorporate by reference relevant allegations in the petition. The petitioner must provide the assigned judicial officer a copy of the motion, a copy of the petition, and a proposed order accelerating the hearing. The court may summarily grant or deny the motion requesting an accelerated hearing.
- (b) Accelerated Rulings on Motions.** A motion that requests an accelerated ruling must contain the words “Accelerated Ruling Requested” below its title. The movant must state in the body of the motion—and not in a separate motion—the legal authority and factual circumstances supporting the request. The court may summarily grant or deny the request for an accelerated ruling.
- (c) Emergency Appointment of a Guardian or Conservator.** A petition that requests the emergency appointment of a temporary guardian, a temporary conservator, or other relief authorized by A.R.S. §§ 14-5310 or -5401.01 must contain the word “Emergency” in its title. The petitioner must state in the body of the petition—and not in a separate motion—the legal authority and factual circumstances supporting the request for emergency or immediate action.
- (d) *Ex Parte* Motions and Petitions.** Any motion or petition that seeks relief without prior notice to interested persons must contain the words “ex parte” in its title. The movant or petitioner must state in the body of the motion or petition—and not in a separate motion—the legal authority and factual circumstances supporting the request.

Rule 14. Acknowledgment of a Consent, Waiver, Renunciation, or Nomination.

(a) Acknowledgment Required. The following documents must be signed before and acknowledged by a person, such as a notary public or a judicial officer, who is legally authorized to verify the identity of the signer:

- (1)** for self-represented individuals: a consent to, joinder in, or statement of no position regarding any petition or application;
- (2)** the waiver of any right, including but not limited to a waiver of notice, waiver of priority for appointment, or waiver of bond;
- (3)** a renunciation of the right to appointment as a guardian, conservator, personal representative, or trustee; or
- (4)** the nomination of a person to serve as a guardian, conservator, personal representative, or trustee.

(b) Disclaimers. The requirements of this rule do not apply to a disclaimer of property executed under A.R.S. §§ 14-10001 to -10018.

COMMENT TO 2020 AMENDMENTS

See A.R.S. § 33-511 for persons who may take acknowledgments within the State of Arizona.

Rule 15. Proposed Orders, Decrees, and Judgments.

- (a) **Definition.** For purposes of this rule, “order” means an order, a decree, or a judgment.
- (b) **Form of Proposed Order.** A proposed order must comply with the requirements of Rule 5.1(d), Arizona Rules of Civil Procedure. In addition, a proposed order that would grant or deny the relief requested in a petition must state the hearing date on that petition immediately below the order’s title.
- (c) **Time to Submit to Court.** If a party wishes to submit a proposed order prior to a hearing, the proposed order should be submitted to the assigned judicial officer at least 5 days before the hearing.
- (d) **Service and Filing.** A proposed order must be served on all parties at the same time it is submitted to the court. The clerk may not file a proposed order. However, a party may file an unsigned proposed order as an attachment or exhibit to a notice of submission or other filing if directed by the court, required by rule, or done to preserve the record on appeal.
- (e) **Duty to Provide Copies and Envelopes.** Unless the court orders otherwise, the party submitting the proposed order must include with it copies to be conformed and postage-paid envelopes addressed to each party who has entered an appearance in the case. This section does not apply if a party submits a proposed order pursuant to a Supreme Court administrative order authorizing electronic filing.
- (f) **Stipulations and Motions; Proposed Forms of Order.**
- (1) **Stipulations.** All written stipulations must be accompanied by a proposed order. If the proposed order is signed and entered, no minute entry need issue.
- (2) **Motions.** If a motion is accompanied by a proposed order, no minute entry need issue if the order is signed and entered.

Rule 15.2. Administrative Dismissals.

(a) Dismissal of Petition. If the petitioner within **two months** after filing a petition **in a probate proceeding** has not obtained an initial hearing date, the court can notify petitioner — and anyone filing a demand for notice — that the petition may be dismissed **one month** from the date of the court’s notice unless within that **month** the petitioner has obtained a hearing date or an extension of the dismissal date.

(b) Effect of Dismissal.

(1) Only Petition Filed in the Case. An order dismissing the only petition filed in a **probate** case is a dismissal without prejudice of the entire case.

(2) Other Petitions Filed in the Case. When more than one petition has been filed in a **probate** case, an order dismissing one petition dismisses only that petition without prejudice.

(c) Dismissal Authority. The court’s authority to issue notices and to dismiss petitions and cases under this rule may be performed by court administration or by an appropriate electronic process under the court’s supervision.

Rule 15.3. Administrative Closure of a Decedent's Estate and Termination of Appointment.

(a) Notice of Impending Administrative Closure. Two years after a decedent's estate is commenced, the court may issue a notice of impending administrative closure of the estate unless at least one of the following has occurred:

- (1) one year has elapsed since the filing of a closing statement under A.R.S. § 14-3933 and no proceedings involving the personal representative or special administrator remain pending;
- (2) a petition to settle the estate under A.R.S. §§ 14-3931 and -3932 has been filed and an initial hearing on that petition has been set;
- (3) a petition to terminate the appointment of the special administrator under A.R.S. § 14-3618 has been filed and an initial hearing on that petition has been set; or
- (4) the court has entered an order setting a future hearing or conference or extending the administration of the estate beyond two years.

(b) Contents of Notice. The notice must inform the parties and all persons who have filed a demand for notice that the estate will be administratively closed and any fiduciary appointment will be terminated without a discharge and release from liability unless:

- (1) One of the circumstances in section (a) has occurred;
- (2) A request for hearing or conference has been filed;
- (3) A petition to terminate the appointment of the personal representative or the special administrator has been filed; or
- (4) A status report describing the matters to be resolved has been filed.

(c) Distribution of the Notice. The clerk or court administrator, as designated by the presiding judge, must distribute the notice to the following:

- (1) the parties;
- (2) in an intestate estate, every heir whose address is contained in the court's file;
- (3) in a testate estate, every devisee whose address is contained in the file; and
- (4) any person who has filed a demand for notice.

(d) Administrative Closure and Termination of Appointment. The court, without a hearing, may issue an order closing the estate administratively and terminating the

appointment of the personal representative or special administrator **if none of the events described in section (b) has occurred** within two months after distribution of the notice.

- (e) Effect of Administrative Closure.** An order closing an estate administratively and terminating the appointment of a personal representative or special administrator under this rule does not discharge the fiduciary from liability or exonerate any bond.
- (f) Authority.** The court's authority to issue notices, administratively close an estate, and terminate appointments under this rule may be performed by court administration or by an appropriate electronic process under the court's supervision.

Rule 15.4. Involuntary Termination of a Minor Guardianship or Closure of a Minor Conservatorship Case.

- (a) Generally.** Consistent with A.R.S. § 14-5210, the clerk or court administrator, as designated by the presiding judge, administratively must close a minor guardianship case filed under A.R.S. §§ 14-5201 to 14-5212 when the minor reaches the age of majority, or upon the minor's adoption, marriage, emancipation, or death.
- (b) Administrative Closure of a Minor Conservatorship Case.** If an order terminating a conservatorship for a minor has not been entered within **two years** after the minor's eighteenth birthday, the court may notify the conservator and the former minor that the court may administratively close the conservatorship and terminate the conservator's appointment unless within three months after the notice, the conservator or the former minor files a petition to terminate the conservatorship and obtains an initial hearing date. An order under this rule that administratively closes a conservatorship and terminates the conservator's appointment does not discharge the conservator from liability, **does not release the depository from restrictions, authorize the release of funds,** or exonerate the conservator's bond.

Rule 15.5. Remedies for Non-Compliance by a Guardian or Conservator.

If a guardian or conservator fails to comply with requirements of A.R.S. Title 14, court rules, or a court order, the court may enter any order designed to ensure compliance or to protect the best interests of the ward or protected person, including:

- (a) an order to the guardian or conservator to comply by a specified deadline;
- (b) a Rule 35 order requiring the guardian or conservator to show cause why the court should not take appropriate action;
- (c) an order appointing a person to investigate the reasons for the guardian's or conservator's non-compliance and to report to the court regarding the investigator's findings and proposed recommendations;
- (d) an order immediately suspending or terminating the guardian's or conservator's authority to take any further action on behalf of the ward or the estate and appointing a successor or temporary fiduciary;
- (e) an order terminating the guardianship or conservatorship proceeding if the court determines that dismissal is appropriate, but the court must not terminate a guardianship or conservatorship if the court has reason to believe the ward remains incapacitated or the protected person remains in need of protection, and that person continues to reside in Arizona;
- (f) an order initiating proceedings that may result in issuance of a fiduciary arrest warrant under A.R.S. § 14-5701;
- (g) an order under Civil Rule 70; or
- (h) other appropriate orders.

Rule 16. Applications in Probate Proceedings.

(a) Meaning of “Application.” “Application” is a written request authorized by statute made to a registrar in a probate proceeding, usually conducted without advance notice to interested persons, to:

- (1)** Informally admit a will to probate or informally appoint a personal representative under A.R.S. §§ 14-3301 to -3311;
- (2)** Informally appoint a special administrator under A.R.S. § 14-3614(1);
- (3)** Issue a certificate of discharge under A.R.S. § 14-3937;
- (4)** Informally appoint a personal representative to administer a later discovered asset under A.R.S. § 14-3938;
- (5)** Grant a conservator the authority to exercise the powers and duties of a personal representative and endorse the conservator’s letters under A.R.S. § 14-5425(D);
or
- (6)** Take any other action authorized by statute.

(b) Form of Application. An application must contain statements required by statute and comply with Rule 5.2 and Rules 8 through 11 of the Arizona Rules of Civil Procedure applicable to pleadings and claims for relief.

(c) Action upon an Application.

- (1) *By the Clerk.*** The clerk must file and retain the application, including any original will. Any amended application or subsequent petition must be filed under the same case number as that assigned to the application.
- (2) *By the Registrar.*** The probate registrar must promptly approve or deny the application. When the registrar denies an application, the registrar must file a statement with reasons for the denial and provide a copy to the applicant.

(d) Notice. The applicant must provide timely notice as required by statute and must file proof of notice with the court.

(e) Objection to Application. Any interested person who opposes the relief requested in an application must file a petition.

Rule 17. Petitions in Probate Proceedings.

- (a) **Meaning of “Petition.”** “Petition” is a written request to a judicial officer seeking substantive relief in a probate proceeding, usually requiring advance notice to interested persons and a hearing. “Petition” includes a counter petition, cross-petition, and third-party petition.
- (b) **Form of Petition.** A petition must contain any statements required by statute and comply with Rule 5.2 and Rules 8 through 11 of the Arizona Rules of Civil Procedure applicable to pleadings and claims for relief.
- (c) **Initial Hearing Date.** The petitioner must obtain a date and time for an initial hearing on the petition.
- (d) **Notice of Hearing on the Petition.** The petitioner must timely provide notice as required by statute, which must include a notice of hearing and a copy of the petition, and must file proof of notice with the court.
- (e) **Contested Proceeding: Response.** A proceeding becomes contested when a party opposes a petition as follows:
- (1) **Written Response.** Any party who opposes the relief requested in a petition should file with the court an objection a response that objects to the petition, or a motion under Rule 12 of the Arizona Rules of Civil Procedure, no later than 7 calendar days before the hearing.
 - (2) **Oral Response.** If a party does not timely file a written response before the hearing, the person must orally respond to the petition at the hearing and file a written objection response that objects to the petition, or a motion under Rule 12, within 14 days after the hearing or as the court directs.
 - (3) **Form of Written Response.** A written objection response must comply with Rule 5.2, and Rules 8 through 11 of the Arizona Rules of Civil Procedure.
 - (4) **Notice of Response.** Unless the court orders otherwise, a party who files a written response to a petition must notify all parties by providing a copy of the response.
- (f) **Joinder or Statement of No Position.** Any party who agrees that the court should enter grant the relief requested in the petition may file a notice of joinder. Any party who takes no position concerning the requested relief may file a statement of no position. A notice of joinder or statement of no position should be made in open court or filed within the times and in the manner provided by section (e).
- (g) **Reply.** Unless the court directs otherwise, a party may not file a reply.

Rule 18. Motions in Probate Proceedings.

A “motion” is a request to a judicial officer made by a party seeking procedural rather than substantive relief. Unless required by the Civil Rules, a judicial officer may rule on a motion without a hearing or oral argument.

Rule 20. Affidavit of Proposed Guardian or Conservator. [Abrogated.]

Rule 21. Background Check Requirements [Abrogated.]

Rule 22. Order Appointing Guardian, Conservator, Personal Representative, or Special Administrator.

(a) Orders.

- (1) *Required Warning.*** Every order appointing a guardian, conservator, personal representative, or special administrator must include the following language:
“Warning: This appointment is not effective until the clerk of the superior court issues the letters of appointment.”
- (2) *Guardianship Finding.*** Every order appointing a guardian must include a specific finding as to whether the guardian’s appointment is due solely to the ward’s physical incapacity.
- (3) *Bond Amount.*** If the court orders a bond [or a bond is required by law], the order must state the bond amount, and letters must not issue until the bond has been filed.

(b) Restrictions on Authority.

- (1) *Generally.*** Every order appointing a guardian, conservator, personal representative, or special administrator, or that authorizes a single transaction or other protective arrangement, must state any restrictions on the fiduciary’s powers. [MOVE EXAMPLES TO A COMMENT.] Examples of restrictions MAY include, BUT ARE NOT LIMITED TO, the following:
 - (A) *Regarding real property:*** “No real property may be leased for more than one year, sold, encumbered, or conveyed without a prior court order authorizing it.”
 - (B) *Regarding monetary assets:*** “No withdrawals of principal or interest may be made without a certified order of the superior court. Unless the court orders otherwise, reinvestment may be made without further court order so long as funds remain restricted in this institution at this branch.”
 - (C) *Regarding guardians:*** “No authority over placement or movement of the ward’s residence, absent an emergency, without prior court approval.” Or, “The guardian’s authority is limited to the power to make medical decisions.”
- (2) *Proof of Restricted Account.*** The fiduciary is responsible for ensuring that proof of any restricted account is filed not later than 30 days after the court enters an order restricting the account. For good cause, the court may order a different deadline.

- (3) ***Attorney Responsibilities.*** Unless the court orders otherwise, an attorney representing a fiduciary who receives any proceeds to be restricted for the benefit of a minor, incapacitated person, or protected person, must ensure that the restricted account is established and properly titled, and that the restricted funds are safely deposited into the account. The court may also order that other parties or counsel ensure that the restrictions are properly implemented and proof is filed.

Rule 23. Appointment of a Temporary Guardian or Temporary Conservator.

(a) Petition. A petition requesting the appointment of a temporary guardian, temporary conservator, or both, must include either:

- (1)** a request for the appointment of a permanent guardian, permanent conservator, or both; or
- (2)** a statement explaining why the appointment of a permanent guardian or permanent conservator is unnecessary.

(b) Copies for the Assigned Judicial Officer. The petitioner must provide a copy of the filed petition and copies of any required affidavits to the assigned judicial officer, or if a judicial officer has not been assigned, to the presiding probate judge or other designated judicial officer.

Rule 25. Order to Fiduciary.

- (a) Generally.** Letters will not issue to a personal representative, a guardian, or a conservator until the appointed fiduciary has signed an acknowledgment and the court has entered an order as set forth below.
- (b) Order to a Personal Representative.** The order must be substantially similar to Form 1, Order to Personal Representative. This requirement does not apply to the appointment of a special administrator.
- (c) Order to a Guardian.** The order must be substantially similar to Form 2, Order to Guardian.
- (d) Order to a Conservator.** The order to a conservator for an adult must be substantially similar to Form 3, Order to Conservator. The order to a conservator for a minor must be substantially similar to Form 3M, Order to Conservator of a Minor.
- (e) Order to a Guardian and Conservator.** If the same person is being appointed as both guardian and conservator, the requirements of (c) and (d) may be satisfied by an order that is substantially similar to Form 4, Order to Guardian and Conservator.

Rule 26. Issuing and Recording Letters of Appointment.

- (a) Scope.** The court must authorize a personal representative, guardian, or conservator to act as a fiduciary before the fiduciary may act for the estate or for an incapacitated or protected person.
- (b) Definition.** “Letters of appointment” authorize the fiduciary to act for the estate or for an incapacitated or protected person.
- (c) Duration of Appointment.** If the duration of a fiduciary’s appointment is limited by statute or court order, the letters of appointment must state the appointment’s termination date.
- (d) Limitation of Authority.** If the court restricts the authority of a personal representative, guardian, or conservator, the letters of appointment must include the language of the court’s order restricting the fiduciary’s authority.
- (e) Certified Copies.** Before issuing certified copies of letters of appointment, the clerk must verify that the fiduciary’s appointment is ~~still~~ in effect.
- (f) Recording.** A conservator must record a certified copy of the letters with the county recorder in every county of any state where the estate owns real property **within 10 days of issuance**. The conservator must file a copy of the recorded letters with the court that appointed the conservator no later than **45** days after a county recorder has recorded them.

Rule 27. [Reserved].

Rule 28. Management of Contested Probate Proceedings.

(a) Generally. If a petition is contested, the court must either:

- (1) **enter an order setting** litigation deadlines; or
- (2) order the parties to meet and confer and set a deadline for the parties to file a joint report and proposed scheduling order.

(b) Meet and Confer. At their meeting, the parties should discuss:

- (1) agreements that could aid in the just, speedy, and inexpensive resolution of the case. Parties must explore settlement or resolution by means other than litigation.
- (2) their anticipated disclosures concerning witnesses, including the number of fact witnesses, whether they intend to use expert witnesses, and how much deposition testimony they expect will be necessary.
- (3) their anticipated disclosures of documents, including any issues already known to them concerning electronically stored information; and
- (4) motions they expect to file, and whether any of the motions can be avoided by stipulations, amendments, or other cooperative activity.

(c) Content of the Joint Report. The joint report must state--to the extent practicable--the parties' positions on the subjects set forth in Probate Rule 28(b) and (d). The parties must submit a proposed scheduling order with their joint report. In the joint report, the parties are not permitted to discuss details of settlement negotiations, criticize the rejection of proposed agreements, or argue that the other party has taken unreasonable positions. A party's signature, or authorized signature, on the joint report is the party's certification that it conferred in good faith regarding the subjects set forth in Probate Rule 28.

(d) Content of the Scheduling Order. The proposed scheduling order must specify deadlines for the following by calendar date, month, and year:

- (1) serving initial disclosures under **Civil** Rule 26.1 if disclosure statements have not already been served or waived;
- (2) identifying areas of expert testimony;
- (3) identifying and disclosing expert witnesses and their opinions under **Civil** Rule 26.1(d);
- (4) propounding written discovery;
- (5) disclosing nonexpert witnesses;

- (6) completing depositions;
- (7) completing all discovery other than depositions;
- (8) final supplementation of Civil Rule 26.1 disclosures;
- (9) for a settlement conference or private mediation, if ordered by the court;
- (10) filing dispositive motions;
- (11) filing joint pre-trial statement, if ordered by the court;
- (12) a proposed trial date; and
- (13) the anticipated number of days for trial.
- (14) [Discuss jury trials under R-18-0018.]

The scheduling order also may address other appropriate matters.

- (e) **Trial Date.** The scheduling order must set either: (A) a trial date; or (B) a date for a trial-setting conference under Civil Rule 16(e) at which a trial date may be set.
- (f) **Modification of Dates Established by Scheduling Order.** The parties may modify the dates established in a scheduling order only by court order for good cause.

Rule 28.1. Disclosure and Discovery.

(a) Generally.

- (1) Unless inconsistent with these rules, Rules 26 through 37, including Rule 26.1, of the Arizona Rules of Civil Procedure apply to disclosure and discovery in contested probate proceedings. However, and unless the parties agree or the court orders otherwise, Civil Rule 26(f)(1) does not apply and Civil Rule 26.2 is replaced by Rule 28 and by this rule.
- (2) A party may not seek discovery from any source, including nonparties, unless
 - (A) a petition is pending before the court;
 - (B) authorized by section (e) of this rule;
 - (C) authorized by statute; or
 - (D) the court orders otherwise.

(b) Presumptive Limits. Unless the court orders otherwise, each side in a probate proceeding is presumptively limited to the following discovery:

- (1) ***Interrogatories.*** 20 interrogatories, with each subpart of a nonuniform interrogatory counted as a separate interrogatory.
- (2) ***Request for Admissions.*** 10 requests.
- (3) ***Requests for Production.*** 10 requests.
- (4) ***Depositions of Fact Witnesses.*** 10 hours total.
- (5) ***Depositions of Expert Witnesses.*** 4 hours for each expert. For purposes of this rule, a treating physician is an expert witness.

(c) Limits by Court Order. The court on its own or on a party's motion may modify the presumptive limits in section (b).

(d) Attorney Fee Claims. For purposes of a claim for attorney fees, the fact that a party undertook discovery within the limits of this rule does not establish that the discovery was necessary or that the time expended on that discovery was reasonable.

(e) Fiduciary Subpoena Authority. Any of the following:

- (1) a public fiduciary ordered by the court to conduct an investigation;
- (2) a licensed fiduciary appointed by the court as a guardian, conservator, or personal representative,

- (3) an unlicensed fiduciary expressly authorized by the court, or
- (4) the attorney for either a licensed or unlicensed fiduciary that is appointed by the court as a guardian, conservator, or personal representative, may in furtherance of the fiduciary's duties request the court clerk to issue subpoenas to produce materials or permit inspections. The fiduciary may request these subpoenas even when there is no contested matter then pending and regardless of whether there is another party to the proceeding. The fiduciary must comply with applicable requirements of Civil Rule 45.

Rule 28.2. Demand for Jury Trial.

- (a) Demand.** On any issue triable of right by a jury, a party may obtain a jury trial by filing and serving a written demand at any time after the proceeding is commenced, but no later than 30 days after the initial hearing on the petition. The demand may not be combined with any other motion or pleading filed with the court
- (b) Specifying Issues.** In its demand, a party may specify the issues for which it requests a jury; otherwise, the party is deemed to have demanded a jury trial on all issues triable by jury. If a party has demanded a jury trial on only some issues, any other party may —within 10 days after the demand is served or within a shorter time ordered by the court —serve a demand for jury trial on any other or all factual issues triable by jury.
- (c) Waiver; Withdrawal.** A party waives a jury trial unless its demand is properly filed and served. A proper demand may be withdrawn only if all parties consent.
- (d) If a Demand Is Made.** If a jury trial is demanded, the action must be tried by jury unless:
- (1)** all parties file a stipulation to a nonjury trial or so stipulate on the record; or
 - (2)** the court, on motion or on its own, finds that there is no right to a jury trial on some or all of those issues.
- (e) If No Demand Is Made.** The court must try all issues on which a jury trial is not properly demanded. The court may, on motion, order a jury trial on any issue for which a jury might have been demanded.
- (f) Advisory Jury; Jury Trial by Consent.** In an action not triable of right by a jury, the court, on motion or on its own:
- (1)** may try any issue with an advisory jury; or
 - (2)** may, with the parties' consent, order a jury trial on any issue, and the verdict will have the same effect as if a jury trial had been held as a matter of right.

Rule 29. Alternative Dispute Resolution in Probate Proceedings.

On a party's motion or on its own, the court may order the parties in a probate proceeding to participate in one or more alternative dispute resolution processes, such as a settlement conference or, if the parties agree, private mediation or a form of arbitration.

(a) Compulsory Arbitration. Unless the parties agree otherwise, they are not subject to compulsory arbitration under Rules 72 through 77 of the Arizona Rules of Civil Procedure.

(b) Duty to Confer and Participate. The parties must make a good faith effort to agree on an alternative dispute resolution process. If they participate in an alternative dispute resolution process, they must do so in good faith.

Rule 30. Conservator's Inventory, Budget, and Account.

(a) Court Authority. For good cause, in a case the court may order a variation of the requirements of this rule for an inventory, budget, or account, or the form thereof, if the court finds that the variation is consistent with prudent management and oversight of the case.

(b) Conservator's Inventory.

(1) Generally. For purposes of this rule, the conservator's appointment is the date the court first issued letters.

(A) Timing. A conservator must file the inventory of a protected person's estate no later than 90 days after the date of the conservator's appointment.

(B) Contents. The inventory must list the value of all property the protected person owned as of the date of the conservator's appointment.

(C) Consumer Credit Report. The credit report required by A.R.S. § 14-5418(A) must be filed with the inventory.

(2) Motion for Additional Time. If the conservator is unable to file the inventory within 90 days, the conservator must file a motion requesting additional time. The conservator must file the motion before the deadline, state why the conservator needs additional time, and how much additional time is needed to file the inventory.

(c) Conservator's Budget.

(1) Generally.

(A) Timing. If ordered by a judicial officer, the conservator must file the initial budget of a protected person's estate no later than the date the conservator's inventory is due. All subsequent budgets will be included on the annual account form.

(B) Contents. The budget must include a reasonable estimate of all anticipated income and expenditures related to the protected person's estate. The budget must cover the same time frame as the conservator's annual account.

(2) Amendments. The conservator must file an amended budget no later than 30 days after reasonably projecting the expenditures for any specific category will exceed the budget by a threshold stated in the instructions for the conservator's budget contained in the Arizona Code of Judicial Administration.

(3) *Filing a Budget, Objections, and Court Action.*

- (A) *Presumption; Objection.*** A timely filed budget is presumed reasonable unless there is an objection. An interested person may file an objection no later than 14 days after the budget or amendment was filed. The court may set a hearing in the absence of an objection.
- (B) *Hearings and Resolving Objections.*** The court may summarily overrule the objection, order the conservator to file a response, or set a hearing on the objection. The conservator has the burden of proving a contested budget item is reasonable, necessary, and in the best interest of the protected person.
- (C) *Court Action.*** If the court reviews the budget, it may approve, disapprove, or modify the budget to further the best interest of the protected person.

(d) *Conservator's Account.*

(1) *Generally.*

- (A) *Timing.*** The conservator must file the annual account no later than 60 days from the anniversary date when the court issued the conservator's letters.
- (B) *Format.*** The conservator's account must conform to the format set forth in the Arizona Code of Judicial Administration.
- (C) *Required Attachments.*** For each bank or securities account listed on the ending balance schedule, the conservator must attach the monthly statement that corresponds to the ending balance of such account.

(2) *Sustainability.* The annual account must include:

- (A)** whether the conservatorship's recurring annual expenses exceed its recurring annual income;
- (B)** and if so, whether the assets available to the conservator less the estate's liabilities are sufficient to sustain the conservatorship for the protected person's foreseeable needs; and
- (C)** if the estate is not sustainable, the conservator must include a discussion of the available options.

(3) *First Account.* The conservator's first account must reflect all activity relating to the conservatorship estate from the date of first appointment through, and including, the anniversary date of the conservator's letters, or other date set by the court.

- (4) ***Later Accounts.*** All later accounts must reflect all activity relating to the conservatorship estate from the ending date of the most recently filed account through, and including, the anniversary date of the conservator's letters, or other date set by the court.
- (5) ***Final Account.*** Except as provided in A.R.S. § 14-5419(F), a conservator must file a final account for a deceased protected person no later than 90 days after the date of the protected person's death.
- (6) ***Motion for Additional Time.*** If the conservator is unable to file an account within the time set forth in this rule, the conservator must file a motion requesting additional time to file the account. The conservator must file the motion before the deadline, state why the conservator needs additional time, and how much additional time is needed to file the account.

Rule 30.1 Financial Order for Conservatorships. [Abrogated].

Rule 30.2 Sustainability of a Conservatorship. [Abrogated].

Rule 30.3. Conservatorship Estate Budgets. [Abrogated].

Rule 31. Annual Guardian Reports.

(a) Generally. For purposes of this rule, the guardian's appointment is the date the court first issued letters.

(1) *Timing.* A guardian must file an annual report on the date established by the court, but in no event later than 60 days after the anniversary date of the guardian's appointment.

(2) *Content.* The guardian's annual report must contain the information outlined in A.R.S. § 14-5315(B).

(b) Motion for Additional Time. If the guardian is unable to file an annual report within the time provided by this rule, the guardian must file a motion requesting additional time to file the report. The guardian must file the motion before the deadline, state why the guardian needs additional time, and how much additional time is needed to file the report.

Rule 32. Personal Representative's Inventory and Account; Trustee's Account.

(a) Personal Representative's Inventory.

- (1) **Generally.** For purposes of this rule, the personal representative's appointment is the date the court first issued letters.

 - (A) **Timing.** Unless the court orders otherwise, no later than 90 days after the date of the personal representative's appointment the personal representative either:

 - (i) file the inventory with the court, and send a copy only to interested persons who request it; or
 - (ii) mail or deliver a copy of the inventory to each heir in an intestate estate, or to each devisee if a will has been probated, and to any other interested person who requests it.
 - (B) The inventory must list the value of all property owned by the decedent as of the date of death.
 - (C) **Notice of Delivery.** If the personal representative mails or delivers the inventory, the personal representative must file a notice identifying to whom the inventory was sent, and the date and method of mailing or delivery.
 - (D) **Supplementary Inventory.** If the personal representative discovers an additional asset or discovers the value of an asset is erroneous or misleading, the personal representative must prepare a supplementary inventory showing the market value as of the date of death of the decedent. The supplementary inventory must be filed with the court if the original inventory was filed, or it must be mailed or delivered to the same parties as the original inventory if mailed or delivered. The personal representative must file a notice of delivery in accordance with the preceding subpart.
- (2) **Motion for Additional Time.** If the personal representative is unable to file or deliver the inventory within 90 days, the personal representative must file a motion requesting additional time. The personal representative must file the motion before the deadline, and state why the personal representative needs more time and how much additional time is needed to file or deliver the inventory.

(b) Personal Representative's Account.

- (1) **Generally.** Unless the court orders otherwise, or the personal representative's administration is supervised by the court, there is no statutory requirement for the personal representative to file annual accounts with the court.
- (2) **Supervised Administration.** A personal representative in a supervised administration under A.R.S. § 14-3505 must file an account with the court not less than annually, and upon closing of the estate.
- (3) **County with a Court Accountant.** Unless the court orders otherwise, if a petition for approval of a personal representative's account is filed in a county with a court accountant, the petitioner is not required to submit the account to the court accountant for review or to pay the court accountant's fee.

(c) Trustee's Account.

- (1) **Generally.** Trusts are generally administered without court supervision. Thus, a trustee is not required to submit any account to the court. A court may order supervision of the trust, a trustee may seek court approval of its account, or a beneficiary may petition the court to compel the trustee to account.
 - (2) **County with a Court Accountant.** Unless the court orders otherwise, if a petition for approval of a trustee's account is filed in a county with a court accountant, the petitioner is not required to submit the account to the court accountant for review or to pay the court accountant's fee.
- (d) Forms.** Unless the court orders otherwise, a personal representative's account or a trustee's account need not be presented on the standard forms for conservator accounts.

Rule 33. Compensation for Fiduciaries, Attorneys, and Statutory Representatives.

- (a) **Generally.** Any request for approval of fiduciary fees, attorney fees, or statutory representation fees must be made in a petition filed under section (b) or section (c) of this rule.
- (b) **Approval in an Account.** When a petition requests approval of a fiduciary's account, and if the fiduciary's account includes the payment of fees to a fiduciary, an attorney, or a statutory representative, the petition may request the court's approval of those fees. Fee statements concerning the fees actually paid must be submitted with the petition, unless the court orders otherwise.
- (c) **Approval by Separate Petition.** If a request for approval of fees was not included in a petition for approval of the fiduciary's account, a fiduciary, an attorney, or a statutory representative may file a separate petition for approval of compensation.
- (d) **Personal Representatives and Trustees.** Unless the court orders otherwise, a personal representative or a trustee, or their attorney, is not required to file a petition for approval of their fees.
- (e) **Content of Request for Approval.** Any request or petition for approval of compensation must be accompanied by statements that include the following information described in subparts (1) through (3):
- (1) If the requested compensation is based on hourly rates, the statements must specify the services provided and explain the tasks performed, the date each task was performed, the time expended in performing each task, the name and position of the person who performed each task, and the hourly rate charged for such services. Block billing is not permitted.
 - (2) If the requested compensation is not based on hourly rates, the statement must include an explanation of the fee arrangement and a computation of the fee for which approval is sought.
 - (3) If the request includes reimbursement of costs, the statement must specify each cost, the date the cost was incurred, the purpose of the cost, and the amount of reimbursement requested or, if reimbursement of costs is based on some other method, an explanation of the method being used.
- (f) **Waiver.** An attorney or statutory representative waives compensation from the estate of a ward or protected person if a request is not timely submitted under A.R.S. §14-5110.

- (g) Objections.** A person objecting to a request for compensation in the account or in a separate petition must provide a specific basis for each objection. The objecting person must mail or provide a copy of the objection to every person who has appeared or requested notice in the case. The person also must file a proof of notice that identifies each person to whom the objection was provided and how notice was provided.
- (h) Fee Guidelines.** When determining reasonable compensation, the court must follow statewide fee guidelines contained in § 3-303 of the Arizona Code of Judicial Administration.

**Rule 34. Distributions to Minor, Incapacitated Persons, and Protected Adults.
[Abrogated].**

COMMENT

This rule applies to partial and final distributions to minors and incapacitated or protected adults, whether the distribution is made by a conservator pursuant to A.R.S. § 14-5425(D) or a personal representative pursuant to A.R.S. § 14-3915. Courts are occasionally asked to approve distributions without the important information required by Rule 34. This rule allows the court to fulfill its obligation to protect the property of persons under a legal disability. In addition, the rule requires fiduciaries and attorneys to inform the court of matters that might not otherwise be apparent from a review of the file.

This rule is not intended to require the appointment of a conservator for a distributee who is under a legal disability. Instead, this rule is designed to ensure the court has all relevant information relating to a proposed distributee who is under a legal disability. Even though a proposed distributee may be under a legal disability, the appointment of a conservator for such person may not be necessary. For example, A.R.S. § 14-7656 authorizes a personal representative, trustee, or conservator, under some circumstances, to make a distribution to a custodian under the Arizona Uniform Transfers to Minors Act. *See* A.R.S. § 14-5103(A).

Rule 35. Enforcement of Court Orders in Probate Cases.

- (a) **Generally.** The court has the **inherent** power to enforce compliance with court orders. In addition to that power, the sanctions provided in statutes, and the sanctions in Rule 37, Arizona Rules of Civil Procedure, the court may issue arrest warrants and orders to show cause as set forth below. This rule does not govern criminal contempt sanctions.
- (b) **Civil Arrest Warrants.** Pursuant to Rule 64.1, Arizona Rules of Civil Procedure, the court may issue a civil arrest warrant to obtain the appearance of a person before the court when that person has failed to appear in court after receiving actual notice of an order or subpoena to appear at a specific time and location that included a warning that the failure to appear might result in the issuance of a civil arrest warrant.
- (c) **Fiduciary Arrest Warrants.** Pursuant to A.R.S. §§14-5701 through 5704, the court may issue a fiduciary arrest warrant to obtain the appearance of a fiduciary before the court when that fiduciary has failed to appear in court after receiving actual notice of an order to appear at a specific time and location that included a warning that the failure to appear might result in the issuance of a fiduciary arrest warrant.
- (d) **Orders to Show Cause.** Pursuant to Rule 7.3, Arizona Rules of Civil Procedure, the court may issue an order to show cause to address problems arising from a party's failure to discharge duties or obligations required by court order, court rule, or statute.